

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 11, 2015

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2014AP2792-FT

Cir. Ct. No. 2014ME101

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

IN THE MATTER OF THE MENTAL COMMITMENT OF BRIAN C.:

WINNEBAGO COUNTY,

PETITIONER-RESPONDENT,

V.

BRIAN C.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Winnebago County:
THOMAS J. GRITTON, Judge. *Affirmed.*

¶1 GUNDRUM, J.¹ Brian C. appeals from an order for involuntary medication. He contends there was insufficient evidence to support the order. We disagree and affirm.

BACKGROUND

¶2 On September 15, 2014, while Brian was being held at the Wisconsin Resource Center (WRC), Winnebago County filed a “Petition for Medication During Detention or Commitment” seeking authorization to involuntarily medicate Brian with psychotropic medication. The circuit court held a hearing on the petition on September 23, 2014. A psychiatrist testifying for the County, Dr. Michele Andrade,² and Brian were the only witnesses to testify at the hearing.

¶3 Andrade testified that she is Brian’s psychiatrist and works at the WRC, to which Brian was returned on September 4, 2014. She indicated that she had observed Brian “on the unit,” reviewed his records, conversed with him, and did a mental status evaluation of him between the time he was returned to the WRC and the date of the hearing on the petition. She stated that the medication she wished to prescribe to Brian was an “antipsychotic” drug called “Abilify.” She testified regarding her discussions with Brian of the advantages, disadvantages and alternatives to accepting Abilify, as well as Brian’s ability to apply an understanding of the advantages, disadvantages and alternatives to his

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(d) (2013-14). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

² While the record contains conflicting spellings of Andrade’s name, our review of the entire record supports our use of this spelling.

mental illness. Brian also testified at the hearing and we discuss his relevant testimony *infra*.

¶4 Following all the testimony, the circuit court stated in relevant part:

The doctor testified that currently [Brian] is suffering from a mental illness; that she has gone through the advantages and disadvantages of the medication with him; and it is her opinion he is substantially incapable of applying the advantages and disadvantages of that medication and she specifically said several times that he was decompensating and even during the time period he has been at the Resource Center, which my understanding has been fairly short term, he was returned there. The medication was ended sometime around August 27 and that the decompensation and the level of the—boy, I forget the word she used, it's more aggressive as far as the hallucinations—I don't think she said hallucinations but the—

Brian interjected, “Delusions,” and the court continued:

The behavior that she is observing. And I still don't have the right word she used. But she believed that the medication would stop that from happening and that he would be able to get rid of many of those problems in his thought patterns so with that understanding I'm going to order the medication for the remainder of the commitment period.

¶5 The circuit court signed an order authorizing the involuntary medication of Brian, concluding that Brian needs medication, medication would have therapeutic value for him, “the advantages, disadvantages, and alternatives to medication have been explained” to him, and that due to “mental illness,” Brian is “substantially incapable of applying an understanding of the advantages, disadvantages and alternatives to his ... condition in order to make an informed choice as to whether to accept or refuse psychotropic medications.” Brian appeals.

DISCUSSION

¶6 “The County bears the burden of proving [Brian] incompetent to refuse medication by clear and convincing evidence.” *Outagamie Cnty. v. Melanie L.*, 2013 WI 67, ¶37, 349 Wis. 2d 148, 833 N.W.2d 607 (citing WIS. STAT. § 51.20(13)(e)). Brian contends the County failed to meet its burden. We disagree.

¶7 When reviewing a circuit court’s involuntary medication order, we will uphold the court’s factual findings unless they are clearly erroneous, and we accept all reasonable inferences from the facts before that court. *See* WIS. STAT. § 805.17(2); *Melanie L.*, 349 Wis. 2d 148, ¶38. In determining whether the County satisfied its burden of proof, we must apply the facts to the standard in WIS. STAT. § 51.61(1)(g)4., the statute at issue in this case. We do this independently of the circuit court. *Melanie L.*, 349 Wis. 2d 148, ¶39.

¶8 WISCONSIN STAT. § 51.61(1)(g)4. provides in relevant part:

[A]n individual is not competent to refuse medication ... if, because of mental illness, ... and after the advantages and disadvantages of and alternatives to accepting the particular medication ... have been explained to the individual, one of the following is true:

....

b. The individual is substantially incapable of applying an understanding of the advantages, disadvantages and alternatives to his or her mental illness, ... in order to make an informed choice as to whether to accept or refuse medication

Brian’s first contention on appeal relates to *when* the required explanation was given to him. He acknowledges that “[Andrade] may have given [him] the statutorily required explanation,” but contends the County failed to meet its burden

because “the record does not reflect *when* that explanation was provided prior to the September 23, 2014 hearing.” We disagree.

¶9 Andrade testified that Brian was returned to the WRC “on the 4th of September” 2014, and then testified as follows:

[County]: And have you had ample opportunity to do a mental status evaluation with regard to [Brian] *since* his return to the Wisconsin Resource Center?

[Andrade]: Yes.

[County]: You have also available to you for review his records?

[Andrade]: Yes.

[County]: And I presume over the course of *the last several weeks* you have had an opportunity to observe him on the unit?

[Andrade]: Yes.

[County]: And specifically I’m concerned about your conversations with [Brian] regarding the psychotropic medications. Have you attempted to explain to [Brian] the psychotropic medications you would like him to take?

[Andrade]: Yes. We have had discussions about alternatives in medications, different medications that is, that would be possible and benefits and possible side effects. (Emphasis added.)

It seems clear to us that the time frame to which Andrade was testifying was the time between September 4, 2014, and September 23, 2014; that is at least a reasonable inference from the context of this testimony. See *Melanie L.*, 349 Wis. 2d 148, ¶38; *State v. Long*, 190 Wis. 2d 386, 398, 526 N.W.2d 826 (Ct. App. 1994) (“Even when a [circuit] court fails to make express findings of fact

necessary to support its legal conclusions, we assume that the [circuit] court made such findings in the way that supports its decision.”). This inference is further supported by Andrade’s cross-examination testimony, in which she notes she had been in direct communication with Brian regarding Abilify during the week prior to the hearing. Brian has provided us with no authority indicating Andrade needed to identify precise dates on which she had “discussions” with Brian regarding medications. We conclude the less-than-three-week time period immediately preceding the hearing was sufficient.

¶10 Next, under WIS. STAT. § 51.61(1)(g)4., the County needed to show that the “advantages and disadvantages of and alternatives to accepting the particular medication” were explained to Brian. Related to this requirement, Andrade testified she had “discussions” with Brian “about alternatives in medications, different medications that is, that would be possible and benefits and possible side effects.” She stated she specifically wished to prescribe Abilify to Brian and she “talked to [Brian] about Abilify, which is a[n] oral medication, which he stated that he is willing to take but only if he is committed.” In response to a question regarding “side effects or disadvantages” of Abilify, Andrade responded:

With all of the antipsychotics, and Abilify is one, there is a possibility long term of movement disorders. Abilify itself, it was explained to [Brian], is balanced in its dopamine receptor, which I know [Brian] has always been concerned about, so that it doesn’t have potential that some of the other ones do such as the Risperidone which he was on.

Andrade also stated that, with Abilify, Brian “might be sedated” and there was a “possibility, although slight, that he might gain weight.” She confirmed that she had explained these advantages and disadvantages to Brian, and further testified

that she “talked [with Brian] about Abilify, Invega Sustenna, as well as Risperidone.” Andrade confirmed that the advantages of these other medications were similar to Abilify. Regarding Risperidone, which Brian previously “was on,” Andrade testified that “[w]ith Risperidone [Brian] had stated that, and he was examined when he came back, that he was gaining enlargement in breast tissue. Not moderately, just mildly, and no secretions but that was from the Risperidone which can happen, not to everybody, not all the time.” Further, she testified on cross-examination that she discussed with Brian that Abilify would “decrease the intensity and frequency of his delusions.” Based upon the above testimony, we are satisfied that the County met its burden to show that Andrade explained to Brian the “advantages and disadvantages of and alternatives to accepting” Abilify.³

¶11 Finally, for the court to find Brian incompetent to refuse medication, the County also had to prove by clear and convincing evidence that after the advantages, disadvantages and alternatives of Abilify had been explained to Brian, he was “substantially incapable of applying an understanding of the advantages, disadvantages and alternatives to his ... mental illness, ... in order to make an informed choice as to whether to accept or refuse medication or treatment.” *See* WIS. STAT. § 51.61(1)(g)4. Andrade testified that following her explanation to Brian of the advantages, disadvantages and alternatives to Abilify, it was her opinion that Brian was “substantially incapable” of applying an understanding of

³ Indeed, Brian appears to acknowledge this in his brief on appeal and Brian’s counsel before the circuit court also appeared to acknowledge as much during argument following testimony at the hearing, stating “at this point on the record we have testimony about conversations that were had in terms of benefits, advantages and disadvantages of medication for” Brian.

those advantages and disadvantages and alternatives to his mental illness in order to make an informed choice.

¶12 On cross-examination, Andrade indicated that when she had conversations with Brian in 2013 regarding his concerns about “dopamine receptors,” the conversations were “delusional.” Asked by Brian’s counsel to elaborate, Andrade stated that Brian “wasn’t quite coherent, making sense, in what he was talking about with the balance and imbalance of dopamine receptors in his brain. He felt that his brain was balanced in that he was mentally stable before medications when it was quite obvious that he had suffered an illness, schizophrenia.” Asked again by Brian’s counsel to elaborate, Andrade explained:

On evaluation and frequent follow-up because he was delusional about his food being tampered with. He had felt that the guards were sexually molesting children and placing those bodily fluids in his food. He is decompensating *now* somewhat in his delusions *since he has been off of medication* and *still believing* that the guards are refusing and isolating him from his family and not—and tampering with—positively tampering with his mail, which has not been shown to be true, and he *believes* that his delusion of the sexual molestation was true and he states often that he has witnesses but we don’t know who those witnesses are. (Emphasis added.)

Regarding her testimony that Brian has been “decompensating” since being off medication, she stated that she has observed this to be true through “talking to him because his delusions are more intense and they are more frequent.”

¶13 Andrade further testified on cross-examination that Brian had been to the WRC “several times” and that he has been prescribed medication for mental illness at least since she first met him in 2013. When asked why Brian does not want to take medication, Andrade stated that Brian has expressed that “he feels that he wants to do it naturally and that he feels that exercise, fresh air, and food

will keep him stable.” She reiterated that she discussed with Brian that Abilify would “decrease the intensity and frequency of his delusions; and in doing that it will make him, I believe, with a reasonable degree of medical and psychiatric certainty, better able to function and interrelate with others around him and even take care of himself.”

¶14 Brian also testified. Regarding his conversations with Andrade, Brian expressed some of the concerns he had regarding advantages and disadvantages of medication:

I had an issue with the way medication was designed to suppress dopamine levels where it would suppress your initiative, your strategy of thought, strength as well as energy, and it was a mood stabilizer, and I was feeling the effects of the way the medication would affect you in that way.

He also stated that he “had problems with communicating, memory, I had ... mood swing issues” and “*Risperidone* elevated my prolactin levels and I was growing breasts from the medication.” (Emphasis added.) In response to his counsel’s question regarding what resources other than medication could be used “at the institution” to address “behavioral issues or problems,” Brian responded that “[t]he guards and the personnel and the psychiatrists” “train you to exercise frequently, keep adequate eating habits” and “get adequate sleep.” He also responded that he could use “[d]eep breathing” and “[r]egulating the system,” and stated that he has utilized and could utilize “[p]sychological services, health services.”

¶15 Brian then made “a statement.” He asserted that he had “well informed knowledge about mental health in general in [his] choice not to be

administered psychotropic medication” and that he was “not suffering” from “conflicting ailments that would deteriorate [his] mental health.” He added:

I have the awareness and keen initiative soundly governing my mental health and not in terms of psychotropic medication. I have a keen insight into the realms of mental illnesses. I also apply myself to the central to keeping mental stability. I engage in healthy living with daily or frequent exercise.

I am not dependent on drugs or alcohol. I have no history of any injuries to the brain. I also try to obtain adequate sleeping habits of seven to eight hours a day. I also regulate my health with healthy dieting by pursuing well-balanced meals. In any case there is no substantial likely [sic] that I will become a proper subject.

Brian further stated:

For, again, essentially keeping mental status and ability, I wish to make an informed choice not to be administered psychotropic medication. *I am positive that the advantages of psychotropic drugs are only theory based* and trial and error testing not related to reality.

Antipsychotropic drugs are only a health crippling sedation. It blindly alters the brain’s chemistry. Some psychotropic drugs attack and block dopamine levels which is a biochemical for various functions in the brain, functions like motivation, initiative, creativity, and mood stabilizing.

Other forms of the psychotropic drug family are the same generation or the second generation medication which alters the narrow transmission of the brain and the way the nerves shoot and fire or communicate. Because of these antipsychotic medications those subjects who take them are at risk to heart and lung disease, Parkinson Disease, tumors as well as diabetes. Because of the amount of these disadvantages there is no benefit in taking the psychotropic drugs.

The doctor’s notion ... that I would be a proper subject for treatment is purely hypothetical. There is no material evidence to verify I will be a proper subject if treatment was not taken. There is no evidence of actual impairment

or delusional thinking. I am a completely sane person and it shows in my day-to-day conduct. (Emphasis added.)

¶16 When asked on cross-examination if he actually stated that he was “not suffering from a mental illness,” Brian responded, “I consider it restored back to reason with all of the healthy habits I have been doing. I never really had a mental disease” In response to the query if there was a time he believed “the staff was putting sexual stuff” into his food, Brian responded, “No.” When questioned why he thought Andrade wanted him to take medication, he responded that he thought “she has read a couple of falsified reviews and is going off of that, but I really haven’t had any issues, any psychotic episodes or any delusional problems—any delusional complaints for years.” He testified that he believed the medication would not benefit him “because it is giving me issues with my health, communicating, my dexterity problems, high blood pressure, weakness and fatigue.” He expressed his belief that psychotropic medications “would only cease my brain’s interactions and I would have issues with communicating or my initiative of thought.” When asked about the last time he took psychotropic medications, Brian responded it was three weeks prior to the hearing.

¶17 Regarding Brian’s ability to apply an understanding of the advantages and disadvantages and alternatives of Abilify to his mental illness, Andrade testified that Brian was delusional and she provided specific examples to support this conclusion. Brian’s testimony was that he was “a completely sane person” who “never really had a mental disease.” Despite Brian’s testimony at times being clear and articulate, the circuit court was entitled to believe Andrade’s testimony—which was based on her recent and direct observations of Brian “on the unit,” conversations with him, and review of his records—as to Brian’s true mental state. Further, Andrade testified as to the advantages of Abilify, while

Brian testified that he was “positive that the advantages of psychotropic drugs are only theory based.” Again, the court was in the position to directly observe the witnesses, evaluate their credibility and weigh their testimony, and it clearly found Andrade’s testimony credible and that Abilify had some meaningful advantages for Brian. See *Joseph Hirschberg Revocable Living Trust v. City of Milwaukee*, 2014 WI App 91, ¶10, 356 Wis. 2d 730, 855 N.W.2d 699 (we give deference to the circuit court’s credibility determinations).

¶18 Contrasting Brian’s apparent beliefs that he has no mental illness and that the advantages of psychotropic drugs, such as Abilify, “are only theory based,” with Andrade’s testimony that was accepted by the circuit court, we cannot say the court erred in its conclusion that the County had met its burden to demonstrate by clear and convincing evidence that Brian is “substantially incapable of applying an understanding of the advantages, disadvantages and alternatives to his ... [condition] in order to make an informed choice as to whether to accept or refuse psychotropic medications.” See WIS. STAT. § 51.61(1)(g)4. As our supreme court stated in *Melanie L.*, “[i]t may be true that if a person cannot recognize that he or she has a mental illness, logically the person cannot establish a connection between his or her expressed understanding of the benefits and risks of medication and the person’s own illness.” *Melanie L.*, 349 Wis. 2d 148, ¶72. Further, if a person actually does not understand that there in fact are some real advantages to use of a certain medication, that person cannot apply an understanding of those advantages, “in order to make an informed choice as to whether to accept or refuse medication.” See § 51.61(1)(g)4.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE
809.23(1)(b)4.

